

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KENROY RICHMOND, et al., :  
Plaintiffs, : 08 Civ. 3577 (LTS) (HBP

-against- : ORDER

GENERAL NUTRITION CENTERS INC., :  
et al., :  
Defendants. :  
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PITMAN, United States Magistrate Judge:

A conference having been held in this matter on August 5, 2009 during which various discovery and scheduling issues were discussed, for the reasons stated on the record in open court, it is hereby ORDERED that:

1. The plaintiffs who have not produced federal income tax returns for the years after they left defendant's employment are directed to request copies of their income tax returns from the Internal Revenue Service for all years after they left defendant's employment no later than August 6, 2009. The request is to be sent to the Internal Revenue Service by registered or certified mail, and plaintiff's counsel is directed to send or fax a copy of registered or certified mail receipt to my chambers no later than August 7, 2009. In light of the fact that these tax

returns were requested in January 2009 and plaintiffs have done nothing for approximately seven months to obtain copies, an unjustified failure to comply with this Order will result in the imposition of sanctions which may include the dismissal of the claims of any defaulting plaintiff.

2. To the extent they have not already been produced, all documents in plaintiffs' possession, custody or control concerning plaintiffs' actual employment (or efforts to obtain employment) after their employment with General Nutrition Center ended shall be produced to defendants' counsel no later than August 10, 2009.

3. To the extent defendants are seeking amended or supplemental answers to interrogatories, their application is denied without prejudice. Any renewed application must include copies of the allegedly deficient interrogatory answers and an explanation of why each of the interrogatory answers in issue is deficient.

4. By Monday August 10, 2009, defendants are to review their interrogatory answers and make any changes or corrections necessary to ensure that the interrogatory answers are true and correct in all

respects. Interrogatory 17 is limited to Blitzer and is limited to the five-year period prior to the earliest employment of any of the plaintiffs by General Nutrition Centers, Inc.

5. If plaintiffs wish to make an application concerning defendants' alleged failure to make a thorough search for documents responsive to plaintiffs' document requests, the application is to be accompanied by the deposition testimony that plaintiffs claim supports their arguments.

6. Plaintiffs' application for an extension of time to make the disclosures required by Fed.R.Civ.P. 26(a) (2) (expert disclosures) (Docket Item 32) is denied. Plaintiffs argue in their motion that an extension is necessary because defendants have failed to produce certain documents necessary for their experts to draft their reports. To this date, however, plaintiffs have never made any application to compel defendants to produce the documents in issue. Thus, the plaintiffs' claimed lack of the documents necessary for the experts' reports is the product of plaintiffs' own lack of diligence in pursuing this litigation.<sup>1</sup>

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<sup>1</sup>At the conference held on August 5, 2009, plaintiffs' counsel made an oblique reference to the fact that his son is (continued...)

7. The time for the service of dispositive motions is extended to September 30, 2009.

Dated: New York, New York  
August 6, 2009

SO ORDERED

  
HENRY PITMAN  
United States Magistrate Judge

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<sup>1</sup>(...continued)

chronically ill and suggested that this was the reason for his failure to seek the documents needed by plaintiffs' experts. Without question, any parent faced with a choice between work and a child's health emergency can make only one rational choice. However, the record does not currently establish that the time demands resulting from this situation were sufficiently extreme to excuse counsel's failure to proceed with greater alacrity. If counsel wishes to renew his application on this basis, he may do so, but any renewed application should explain with specificity how counsel's parental obligations prevented him from complying with the Court's scheduling Order.